

1970 Bill 96

Third Session, 16th Legislature, 19 Elizabeth II

THE LEGISLATIVE ASSEMBLY OF ALBERTA

BILL 96

An Act to amend The Small Claims Act

THE ATTORNEY GENERAL

First Reading

Second Reading

Third Reading

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BILL 96

1970

An Act to amend The Small Claims Act

(Assented to _____, 1970)

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Alberta, enacts as follows:

1. *The Small Claims Act* is hereby amended.

2. Section 5 is amended

(a) by striking out subsections (1) and (2) and by substituting the following:

5. (1) A magistrate has jurisdiction to hear and adjudicate upon any matter under this Act within the Province of Alberta.

(2) An action or matter shall be commenced, carried on and heard in the judicial district in which the defendant or one of the defendants is then dwelling or carrying on business or in the judicial district in which the cause of action arose.

(b) by striking out subsection (4).

3. Section 8 is amended

(a) by striking out subsection (1) and by substituting the following:

8. (1) The plaintiff shall, before the summons is issued, deposit with the magistrate the sum specified in the tariff.

(b) by striking out subsection (3).

4. Section 9, subsection (3) is amended by striking out the words "upon application,".

5. Section 11, subsection (1), clause (a) is amended by striking out the words "by any adult literate person".

Explanatory Notes

1. This Bill amends chapter 93 of the Statutes of Alberta, 1968.

2. Section 5 presently reads:

5. (1) A magistrate has jurisdiction to try and adjudicate upon any matter under this Act only within the limits of the judicial district in which he resides.

(2) A magistrate does not have jurisdiction to try or to adjudicate upon any matter under this Act unless, at the time the summons is issued, the defendant or one of the defendants resides or carries on business within the judicial district in which the magistrate resides.

(3) Where a defendant is a municipal or school authority the claim may be tried in any judicial district

(a) in which all or any part of the area of that authority is included, or

(b) in which any other defendant resided or carried on business at the time the summons was issued.

(4) Notwithstanding anything in this section, any magistrate may, upon the request of the Attorney General, try and adjudicate upon any matter under this Act in any judicial district in which at the time of the issue of the summons the defendant or some one of the defendants resided or carried on business, without regard to the place of residence of the magistrate.

3. Section 8, subsections (1) to (3) presently read:

8. (1) The plaintiff shall before the summons is issued, deposit with the magistrate the sum of \$4 by way of a deposit on the taxable fees of the magistrate and his bailiff.

(2) When the defendant lives farther than 20 miles from the place of trial the magistrate in his discretion may, before the summons is issued, require the plaintiff to pay as a deposit an additional sum calculated at the prescribed rate a mile for the number of miles return between the defendant's residence and the place of trial.

(3) The amount of the total deposit with the particulars thereof shall be endorsed on the summons and copy by the magistrate, and if it is not actually paid and so endorsed the summons and the service thereof are void.

4. Section 9, subsection (3) presently reads:

(3) Where a summons is not served within the time prescribed by this section, a magistrate may upon application, issue a new summons in accordance with this Act.

5. Service of documents. Personal service can now be effected by other than literate adult persons.

6. Section 13 is struck out and the following is substituted:

13. Service may be effected on any day including Sunday.

7. Section 15 is amended by striking out subsection (1) and by substituting the following subsection:

15. (1) A defendant may, at any time before the date of the hearing, pay to the magistrate a sum of money to satisfy the plaintiff's claim and the costs.

8. Section 17, subsection (1) is amended by striking out the words “, upon application,”.

9. Section 18, subsection (2) is amended by striking out clause (a).

10. Section 22 is amended

- (a) as to subsection (1) by striking out the words “A clerk of the court in which a cause is pending” and by substituting the words “A magistrate before whom a cause is pending or his clerk”,
- (b) as to subsection (2) by striking out the words “clerk of the court” and by substituting the words “magistrate or his clerk”.

11. Section 24 is amended by striking out the words “such costs as the magistrate orders” and by substituting the words “costs in the discretion of the magistrate”.

12. Section 26 is amended as to subsection (1) by adding at the end thereof the words “or may sign judgment by default on production of such evidence as the magistrate considers sufficient”.

13. The following section is added after section 27:

27a. A magistrate may, upon such terms as he thinks just, set aside or vary any judgment entered by default.

14. Section 30, subsection (3) is amended by striking out the words “magistrate resides” and by substituting the words “action was tried”.

15. Section 34 is struck out and the following is substituted:

6. Section 13 presently reads:

13. The service of any document on a Sunday or on any other holiday is void.

7. Section 15, subsection (1) presently provides as follows:

15. (1) A defendant may, not later than eight days before the date of the hearing, pay to the magistrate a sum of money to satisfy the plaintiff's claim and the costs of summons and service.

8. Adjourning trial. The presiding magistrate will now be able to adjourn the trial on his own motion.

9. Consequential from amendment to section 5. Section 18, subsection (2) presently reads:

(2) Where a trial has commenced and the presiding magistrate is unable for any reason to complete the proceedings,
(a) any magistrate residing in the same judicial district as the first magistrate, or
(b) any magistrate requested to act by the Attorney General, may take up the proceedings at the point at which they have been left off by the first magistrate, and the succeeding magistrate, according to his opinion as to what is required to ensure justice,
(c) may continue the trial to completion, or
(d) may recommence the trial.

10. Section 22 presently reads:

22. (1) A clerk of the court in which a cause is pending, may at any time take an admission, indebtedness or liability, as the case may require,
(a) in the case of a claim, from a defendant, or
(b) in the case of a counterclaim, from a plaintiff
and upon the production of the admission to the magistrate and proof thereof by the oath of the clerk, the magistrate may order that judgment be entered thereon.
(2) An admission taken pursuant to subsection (1) shall be in the writing of the person making it or the writing of some person acting on the direction of the person making it and be witnessed by the clerk of the court.

11. Costs on withdrawal of claim.

12. Section 26, subsection (1) presently reads:

26. (1) Where a defendant fails to appear for trial the magistrate may in his discretion allow the plaintiff to prove his claim in the same manner that a defendant may prove a counterclaim under subsection (2) of section 25, or the magistrate may adjourn the trial to a later date.

13. Opening up default judgment.

14. This is consequential to the amendment to section 5. Subsection (3) presently reads:

(3) The person in whose favour judgment is given, after paying the prescribed fee, may file the certificate of judgment in the office of the district court in the judicial district in which the magistrate resides and thereupon it shall be entered as a judgment of the court, and execution and garnishee summons may be issued thereon according to the ordinary procedure of the district court.

15. Magistrate's record. Transcripts will no longer be required for appeals.

34. Upon being served with a notice of appeal, a magistrate shall forward to the clerk of the district court all material in his possession pertaining to the action.

16. Section 35 is amended

- (a) by striking out subsection (2),
- (b) as to subsection (3) by striking out the words "or (2)".

17. Section 39 is struck out and the following is substituted:

39. The appeal shall be heard as a trial *de novo* unless otherwise ordered by the court.

18. Section 44 is amended by striking out the words "keep a record" and by substituting the words "cause a record to be kept".

19. This Act comes into force on the day upon which it is assented to.

16. This amendment is consequential to the amendment to section 34. Section 35 presently reads:

35. (1) Where an appellant fails to comply with the requirements of subsection (1) of section 33, the appeal is automatically dismissed.

(2) Where an appellant fails to provide a transcript as required by section 34, the appeal court may upon application dismiss the appeal unless it is of the opinion that the appellant is not responsible for failing to do so.

(3) When an appeal is dismissed pursuant to subsection (1) or (2), the appeal court may make such order as to costs as it considers just.

17. This also arises from the amendment to section 34. Section 39 presently reads:

39. (1) Upon the hearing of the appeal the record of the evidence which the appellant has provided pursuant to section 34 shall be read and the matter in appeal shall be decided upon such evidence.

(2) Notwithstanding subsection (1), where the district court is satisfied that the evidence available from the trial magistrate's court is not complete, the court shall order that the appeal be heard as a trial de novo.

18. Section 44 presently reads:

44. A magistrate shall keep a record of all processes issued by him under this Act with the date and names of the parties and the judgments rendered, as well as a statement of all moneys received and the application thereof.